

§ 1804.16

§ 1804.16 Action by appeal authority.

The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Coordinator and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in §1804.14(a) will be considered by the Director, NACIC de novo and that decision shall be final.

§ 1804.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Director, NACIC within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Director, NACIC in accordance with the requirements of §1804.14(a).

§ 1804.18 Termination of access.

The Coordinator shall cancel any authorization whenever the security clearance of a requester (or research associate, if any) has been canceled or whenever the Director, NACIC determines that continued access would not be in compliance with one or more of the requirements of §1804.14(a).

PART 1805—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENT ENTITIES OF COMPETENT JURISDICTION

Sec.

1805.1 Scope and purpose.

1805.2 Definitions.

1805.3 General.

1805.4 Procedures for production.

AUTHORITY: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 “U.S. Counterintelligence Effectiveness, dated May 3, 1994; 50 U.S.C. 403g; United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951); E.O. 12333; E.O. 12356; U.S. v. Snapp 444 U.S. 507 (1980).

SOURCE: 64 FR 49894, Sept. 14, 1999, unless otherwise noted.

32 CFR Ch. XVIII (7–1–02 Edition)

§ 1805.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of:

(a) Material contained in the files of NACIC.

(b) Information relating to or based upon material contained in the files of NACIC.

(c) Information acquired by any person while such person is an employee of NACIC as part of the performance of that person's official duties or because of that person's association with NACIC.

§ 1805.2 Definitions.

For the purpose of this part:

NACIC means the National Counterintelligence Center and includes all staff elements of the NACIC.

Demand means any subpoena, order or other legal summons (except garnishment orders) that is issued by a federal, state or local government entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

Employee means any officer, any staff, contract or other employee of NACIC, any person including independent contractors associated with or acting on behalf of NACIC; and any person formerly having such relationships with NACIC.

Production or produce means the disclosure of:

(1) Any material contained in the files of NACIC; or

(2) Any information relating to material contained in the files of NACIC, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of NACIC as a part of the performance of their official duties or because of their official status or association with NACIC; in response to a demand upon an employee of NACIC.

NACIC Counsel is the NACIC employee designated to manage legal matters and regulatory compliance.

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§ 1805.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part also applies to former employees to the extent consistent with applicable non-disclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1805.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify NACIC Counsel, who will follow the procedures set forth in this section.

(b) NACIC Counsel and the Office Chiefs with responsibility for the information sought in the demand shall determine whether any information or materials may properly be produced in response to the demand, except that NACIC Counsel may assert any and all legal defenses and objections to the demand available to NACIC prior to the start of any search for information responsive to the demand. NACIC may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by NACIC has been made by the entity or person that issued the demand.

(c) NACIC officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would reveal classified information;

(iii) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(iv) Disclosure would interfere with the orderly conduct of NACIC's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the NACIC is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the NACIC Counsel.

(e) The NACIC Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, NACIC Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this part and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate NACIC officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the required instructions.

(g) If the court or any other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with § 1805.4(g) or rules that the demand must be complied with regardless of instructions rendered in accordance with this Part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by NACIC Counsel, respectfully decline to comply with the demand under the authority of *United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this part.

(h) With respect to any function granted to NACIC officials in this part, such officials are authorized to delegate in writing their authority in any

case or matter or category thereof to subordinate officials.

(i) Any non-employee who receives a demand for the production or disclosure of NACIC information acquired because of that person's association or contacts with NACIC should notify NACIC Counsel, (703) 874-4121, for guidance and assistance. In such cases, the provisions of this part shall be applicable.

PART 1806—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec.

1806.1 Scope and Purpose.

1806.2 Definitions.

1806.3 Procedures governing acceptance of service of process.

1806.4 Notification to NACIC Counsel.

1806.5 Authority of NACIC Counsel.

AUTHORITY: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 “U.S. Counterintelligence Effectiveness”, dated May 3, 1994; 50 U.S.C. 403g; E.O. 12333.

SOURCE: 64 FR 49895, Sept. 14, 1999, unless otherwise noted.

§ 1806.1 Scope and purpose.

(a) This part sets forth the authority of NACIC personnel to accept service of process on behalf of the NACIC or any NACIC employee.

(b) This part is intended to ensure the orderly execution of the NACIC's affairs and not to impede any legal proceeding.

(c) NACIC regulations concerning employee responses to demands for production of official information before federal, state or local government entities are set out in part 1805 of this chapter.

§ 1806.2 Definitions.

NACIC means the National Counterintelligence Center and include all staff elements of NACIC.

Process means a summons complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local government entity of competent jurisdiction.

Employee means any NACIC officer, any staff, contract, or other employee

of NACIC, any person including independent contractors associated with or acting for or on behalf of NACIC, and any person formerly having such a relationship with NACIC.

NACIC Counsel refers to the NACIC employee designated by NACIC to manage legal issues and regulatory compliance.

§ 1806.3 Procedures governing acceptance of service of process.

(a) *Service of Process Upon the NACIC or a NACIC Employee in an Official Capacity.*—(1) *Personal Service.* Unless otherwise expressly authorized by NACIC Counsel, or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, located at Central Intelligence Agency Headquarters, Langley, Virginia.

(2) *Mail Service.* Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the NACIC Counsel or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC. Process by mail should be addressed as follows: NACIC Counsel, National Counterintelligence Center, Washington, DC 20505.

(b) *Service of Process Upon a NACIC Employee Solely in An Individual Capacity.*—(1) *General.* NACIC will not provide the name or address of any current or former NACIC employee to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even when the matter is related to NACIC activities.

(2) *Personal Service.* Subject to the sole discretion of appropriate officials of the CIA, where NACIC is physically located, process servers generally will not be allowed to enter CIA Headquarters for the purpose of serving process upon any NACIC employee solely in his or her individual capacity. Subject to the sole discretion of the Director, NACIC, process servers will generally not be permitted to enter NACIC office space for the purpose of serving process upon a NACIC employee solely in his or her individual capacity. The NACIC Counsel, the Director, NACIC, and the Deputy Director, NACIC are